

ATTORNEY GENERAL OPINIONS

The following Attorney General opinions were filed with the Secretary of State's Office between June 21 and December 31, 2002. For copies of these opinions, call (602) 542-5025. These opinions can also be viewed online at the Attorney General's web site: www.attorney_general.state.az.us/opinions/.

Opinion Number	Date of Opinion	Date filed	Opinion summary (Subject)
I01-014	June 21, 2001	June 21, 2001	Definition of Teacher under A.R.S. § 15-977: The teacher compensation increases through the CSF are not limited to traditional classroom teachers. Certificated teachers, certified teachers, and others employed to provide instruction to students on matters related to the school's educational mission are eligible for the increases in compensation.
I01-015	June 29, 2001	June 29, 2001	Workforce Development Account as Local Revenues to Community Colleges: Article IX, § 21(1) of the Arizona Constitution prohibits the governing board of any community college district from authorizing expenditures of local revenues in excess of a prescribed limitation, except in the manner provided by law. Section 15-1472(F), A.R.S., which states that monies in community college district workforce development accounts shall not be considered local revenues, is within the Legislature's express power under § 21(1). Therefore, 15-1472(F) is not unconstitutional.
I01-016	July 20, 2001	July 20, 2001	Impact of legislation regarding military airports on schools: SB 1525 does not preclude the construction of new schools near a high noise or accident potential zone or the operation, improvement, or expansion of existing schools either in, or near, a high noise or accident potential zone. The legislation also does not, by its terms, impose any new civil liability for the operation or expansion of an existing school in or near high noise or accident potential zones. Whether the statutes might otherwise affect liability in any particular situation requires the analysis of specific facts and is not addressed in this formal legal Opinion.
I01-017	July 24, 2001	July 24, 2001	School District Discretion Regarding Teacher Base Salary Increases from Classroom Site Fund: Under A.R.S. § 15-977(A), school districts and charter schools must use twenty percent of the monies in the CSF for "teacher base salary increases and employment related expenses." Districts and charter schools have discretion with respect to which teachers receive a base salary increase and in what amount.
I01-018	August 1, 2001	August 1, 2001	Retirees in the Corrections Officer Retirement Plan: Based on the 2001 amendments to the statutes governing the ASRS, retired correctional officers who return to work in CORP-designated positions must participate in ASRS.

Semi-Annual Index

I01-019	Sept. 24, 2001	Sept. 24, 2001	<p>Legislative Term Limits: The Arizona Constitution prohibits a legislator who has served four consecutive terms in either the State House of Representatives or the State Senate from serving an additional consecutive term in the same chamber of the Legislature. Ariz. Const. Art. IV, pt. 2, § 21.</p> <p>Accordingly, a legislator who has served four consecutive terms in the House or the Senate may not run for a fifth consecutive term. This four consecutive term limit applies regardless of whether the legislator's residence is in a district with a different number or with different geographic boundaries as a result of redistricting or whether the legislator has moved to a different district.</p> <p>The Secretary of State performs a ministerial function when accepting candidate nomination papers, and the Legislature has not given the Secretary of State the statutory responsibility or authority to reject a candidate's nomination papers if the candidate will exceed the constitutional term limit requirement. Absent a legislative change authorizing the Secretary of State to reject nomination papers on these grounds, a court challenge is necessary to bar a candidate's name from appearing on the ballot if his or her candidacy violates the term limit requirement.</p>
I01-020	Nov. 12, 2001	Nov. 16, 2001	<p>Proposition 301 Increases in Education Funding:</p> <ol style="list-style-type: none"> 1. Because Proposition 301 is a referendum, the constitutional restrictions adopted in Proposition 105 apply, permitting legislative changes only if those changes further the purpose of Proposition 301 and receive the approval of three-fourths of the House of Representatives and Senate. 2. Proposition 301 mandates an increase in the base level beginning in 2001-2002 and prevents the State from decreasing per pupil funding through the equalization assistance formula below the level established for 2001-2002. 3. The mandatory inflation adjustment to State aid to public schools should extend to the base level and other components of the revenue control limit despite the use of the word "or" in A.R.S. § 15-901.01. This interpretation is most consistent with the school finance formula, the information provided to the voters, and the legislative history.
I01-021	Nov. 28, 2001	Nov. 28, 2001	<p>Emergency Expenditures: Pursuant to A.R.S. § 35-192, expenditures may be authorized for an emergency in a fiscal year after that emergency is declared, provided that expenditures authorized for that subsequent fiscal year do not exceed \$4 million and otherwise comply with applicable statutes and rules.</p>
I01-022	Dec. 11, 2001	Dec. 13, 2001	<p>Appointing Receivers for Residential Rental Property: No. A city, town or county may apply for the appointment of a temporary receiver under A.R.S. § 33-1903 only if the landlord has failed to register in compliance with A.R.S. § 33-1902 and the property has also been designated as slum property.</p>

Semi-Annual Index

I01-023	Dec. 20, 2001	Dec. 24, 2001	<p>Water Infrastructure Finance Authority Loans to Indian Tribes: (1) The statutes do not require that an Indian tribe or tribal entity be subject to suit in a particular court. The Attorney General has the authority to sue a tribe or tribal entity in federal, state, or tribal court to enforce a loan contract as long as the tribe or tribal entity has waived its immunity from suit.</p> <p>(2) The statutes permit an Indian tribe to obtain a loan from WIFA without waiving its immunity from suit if the Attorney General is able to sue someone other than the tribe, if necessary, to obtain the assets used to secure the loan in the event of the tribe's default. Under this alternative, any third party that is mutually agreeable to WIFA and the tribe may hold the assets, as long as the assets are irrevocably placed with the third party and the third party is subject to suit by the Attorney General to obtain the assets in the event of the tribe's default.</p>
I01-024	Dec. 21, 2001	Dec. 24, 2001	<p>Tax Exemption for Cemetery Property: Although Proposition 105 would allow an exemption from ad valorem taxation for personal property owned by cemeteries and used to inter human beings, the implementing statute adopted by the Legislature limited the exemption to real property.</p>